

THE MARKS LAW FIRM, P.C.

January 22, 2021

Via ECF:

Hon. John P. Cronan
United States District Judge
United States District Court
500 Pearl Street, Courtroom 20C
New York, New York 10007

RE: Eric Rogers v. Luxeye Mott LLC et al
Index: 1:19-cv-9696-JPC

Dear Judge Cronan,

In accordance with your Honor's October 2, 2020 order, the Parties provide this joint status update. Plaintiff sent discovery demands on April 27, 2020 and to date has not received responses from Defendants or any discovery demands from Defendants. On October 15, 2020, Plaintiff sent a deficiency letter to Defendants and requested a Rule 37 meet and confer to discuss discovery issues. While we are awaiting tenants Counsel response to our deficiency letter at this time, we are confirmed to meet with Landlords Counsel on Monday October 19, 2020 at 9:30am by phone. Plaintiff is hopeful to resolve the discovery issues and get this case back on track without seeking judicial intervention for the same.

The undersigned counsel submits and respectfully request an appearance before Your Honor to adjudicate the discovery issues. This pre-motion letter is submitted in compliance with Your Honors Individual Rules and Practices in Civil Cases.

On October 19, 2020 the parties submitted a joint status update regarding discovery (Exhibit A), to which Your Honor held a telephonic conference regarding the discovery issues. During the November 23, 2020 conference, Your Honor ordered Defendants were to respond to Plaintiffs combined discovery demands, and Your Honor generously provided until January 29, 2021 to complete fact discovery. Since the November 23, 2020 telephonic Conference with Your Honor, nothing substantively has changed. TO date, no discovery has been produced, nor has Defendants served any discovery demands.

On April 27, 2020, Plaintiff served initial disclosures, discovery demands and demand for interrogatories (Exhibit B). After follow ups, and allowing time for the pandemic effect to settle, on October 15, 2020 Plaintiff served its first discovery deficiency letter upon Defendant, since no responses were received whatsoever, and demanded a FRCP 37.2 conference (Exhibit C). The parties engaged in a rule 37.2 conference to resolve the discover dispute resulting in the October 19, 2020 status report (Exhibit D [Dkt 22]). The Defendants agreed to provide complete responses yet nothing was produced whatsoever. After various attempts to resolve the case has failed, on January 20, 2021 Plaintiff sent a follow up email demanding discovery and a rule 37.2

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meet and confer (Exhibit E). On January 22, 2021, the parties engaged in a meet and confer without resolving the discovery issues – i.e. when are Defendants going to produce discovery responses as promise and ordered. Further, Defendants want to now, serve discovery demands, which must be rejected – since serving discovery demands on the eve of fact discovery closing is highly prejudicial and a tactic to delay the case even further.

Defendant has had nearly a year now to respond to our demands, which is ample time. Defendant has not moved for a protective order or identified any confidential information that would cause a delay. All discovery sought is relevant, and these deficiencies severely prejudice Plaintiff, particularly given the nature of the case.

Plaintiff's attempts to confer regarding the discovery disputes has proved unfruitful. Defendant's failure to produce discovery, initial disclosures, or abide by Your Honor's Scheduling Order is highly prejudicial to Plaintiff. Plaintiff further request and order precluding Defendant from serving demands at this late stage since no reasonable excuse by Defendant has been proffered for such failure to comply.

Therefore, Plaintiff respectfully requests a conference to adjudicate the discovery issues by obtaining the necessary discovery before the close of fact discovery. Plaintiff respectfully requests a conference for the Court's guidance.


The parties have further discussed the desire to resolve the case and respectfully request a referral to the SDNY mediation program.

We thank you and the Court for its time and consideration on this matter.

It is hereby ORDERED that Defendants shall respond to Plaintiff's letter by February 1, 2021, and that the parties shall appear for a telephone conference on February 3, 2021 at 10:00 a.m. At the scheduled time, counsel for all parties should call (866) 434-5269, access code 9176261.

SO ORDERED.

Date: January 27, 2021
New York, New York


JOHN P. CRONAN
United States District Judge

Respectfully Submitted,

The Marks Law Firm, P.C.

By: 
Bradly G. Marks